

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DOMINGO COLON MONTANEZ,

Plaintiff

v.

RICHARD KELLER, et al.,

Defendant

CIVIL ACTION NO. 3:13-CV-02564

(CAPUTO, J.)
(MEHALCHICK, M.J.)

REPORT AND RECOMMENDATION

Plaintiff Domingo Colon Montanez, proceeding *pro se*, is an inmate currently incarcerated at the State Correctional Institution at Smithfield located in Huntingdon, Pennsylvania. On October 15, 2013, Montanez filed this civil rights action pursuant to [42 U.S.C. § 1983](#), ([Doc. 1](#)), and a motion for leave to proceed *in forma pauperis*. ([Doc. 2](#)). On December 5, 2013, this Court granted the motion to proceed *in forma pauperis* and directed the United States Marshal to serve Plaintiff's complaint on Defendants in accordance with [Federal Rules of Civil Procedure 4](#). ([Doc. 12](#)). On March 24, 2014, a waiver of the service of summons was returned by Defendants. ([Doc. 21](#)). The request to waive service of summons was sent on February 12, 2014, and Defendants have sixty (60) days from that date to either file and serve an answer or a motion under Rule 12. (*See* [Doc. 21](#)). As such, Defendants have until April 14, 2014, to submit a response to Plaintiff's complaint. On February 18, 2014, Plaintiff filed a motion for entry of default judgment against all Defendants, pursuant to [Federal Rule of Civil Procedure 55](#). ([Doc. 17](#)). For the following reasons, it is recommended that Plaintiff's motion for default judgment be denied as premature.

Defendants are afforded the opportunity to respond to the complaint within the statutory time period. A default judgment may be entered where a party fails to plead or otherwise defend. *See Fed. R. Civ. P. 55*. In this case, Defendants have sixty (60) days from February 12, 2014, the date when the request to waive service of summons was sent, to respond to Plaintiff's complaint. Defendants are still within the statutory time period to respond to the complaint, as a response is not due until April 14, 2014. As such, it is recommended that Plaintiff's motion for default judgment against all Defendants ([Doc. 17](#)) be **DENIED** as premature.

Dated: April 9, 2014

s/ Karoline Mehalchick

KAROLINE MEHALCHICK
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DOMINGO COLON MONTANEZ,

Plaintiff

v.

RICHARD KELLER, et al.,

Defendant

CIVIL ACTION NO. 3:13-CV-02564

(CAPUTO, J.)
(MEHALCHICK, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing **Report and Recommendation** dated **April 9, 2014**.

Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Dated: April 9, 2014

s/ Karoline Mehalchick
KAROLINE MEHALCHICK
United States Magistrate Judge